

SIKKIM



GOVERNMENT

GAZETTE

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**DEPARTMENT OF INFORMATION TECHNOLOGY
GOVERNMENT OF SIKKIM
GANGTOK**

No.1120/362/DIT

Date. 5.8.2009

NOTIFICATION

In exercise of the powers conferred by section 90 of the Information Technology Act, 2000 (21 of 2000), the State Government hereby makes the following rules, namely:-

1. Short title, extent and commencement:

- (1) These rules may be called the Sikkim Information Technology Rules, 2009.
- (2) They extend to the whole of Sikkim.
- (3) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions:

In these rules, unless the context otherwise requires -

- (a) "Act" means the Information Technology Act, 2000 (21 of 2000);
- (b) "browser" means any person who accesses the internet in any of its forms or protocols which are now in existence or may come into existence hereafter, and also means a person who uses the computer in a cyber café,
- (c) "cyber cafe" means and includes any place by whatsoever name called where the general public have an access to the internet in any of its forms or protocols either on payment or free of charge for any purpose including recreation or amusement;
- (d) "log register" means a register of browsers maintained by the owner of a cyber café in the form prescribed in Annexure-II;
- (e) "Owner of a cyber café" shall mean, in addition to the proprietor/proprietors/partners, the staff who is for the time being in charge of the cyber café.

3. Cyber Café to be a place of public amusement and public entertainment

Cyber café shall be deemed to be a place of public amusement and public entertainment under clause (l) of sub-section (1) of section 2 of the Sikkim Police Act, 2008.

4. No Objection Certificate from Crime Branch

Any person or a Firm intending to apply for a trade license shall, before applying for the trade license, apply and obtain a No Objection Certificate from the Crime Branch, Sikkim Police, in the form prescribed in Annexure-I, which shall be enclosed with the application form for trade license.

Provided that in the case of trade licenses for cyber café already issued or under process on the date on which these rules come into force, the licensee or the applicant for license as the case may be, shall apply for the No Objection Certificate within 30 (thirty) days from the date of coming into force of these rules, and the Crime Branch shall dispose of such applications within 45 (forty five) days from the date of receipt of the applications.

Provided further that where the Crime Branch refuses to grant a No Objection Certificate (NOC) in respect of a trade license already issued at the commencement of these rules for valid reason, the trade license issuing authority shall proceed with action for cancellation of the license issued.

5. Responsibilities of the owners of a cybercafé

The owner of a cyber café shall be responsible for complying with the following requirements in the cyber café, namely:-

- (1) The computers earmarked for use by browsers shall be serially numbered from the figure 1 onwards. If a computer is set up in a cubicle, the serial number of the computer shall be displayed outside the cubicle.
- (2) Owner of a cyber café shall maintain a log register of browsers in the cyber café in the form prescribed in Annexure-II, which shall be preserved in the cyber café for a minimum period of three years from the date of the last entry in it, and shall be produced for inspection to law enforcement agencies on demand.
- (3) No browser shall be allowed access to the use of internet in the cyber café unless he establishes his identity by producing an authentic photo identity document (identity card issued under the authority of the Central Government, a State Government, a University or a recognized educational institution, passport, voter's identity card,

Permanent Account Number card, driving license, ration card etc.) to the owner of the cyber café, who shall keep a photocopy of such photo identity document on record duly giving a continuous serial number for each such document. The photo copies of such identity documents shall be preserved in the cyber café for three years from the date of browsing by the browser, and shall be produced for inspection to law enforcement agencies on demand:

Provided that in the case of regular browsers who are personally known to the owner of the cyber café, the production of a photo copy of the identity document on each occasion may be dispensed with till such time the photo copy of the identity document of the browser is on record in the cyber café.

- (4) Any browser who does not produce a photo identity document as required under sub-rule (2) shall be photographed by the owner of the cyber café using a web camera hooked to one of the computers or computer systems in the cyber café, after duly informing the browser that his photograph will be loaded in the hard disk of the computer for verification by law enforcement agencies whenever required. Such web photographs shall be produced for inspection by law enforcement agencies on demand.

Provided that in the case of regular browsers who are personally known to the owner of the cyber café, the web photographing of the browser on each occasion may be dispensed with till such time his web photograph once taken and stored in the hard disk of the computer is on record in the cyber café.

- (5) Children browsers who do not possess identity card shall not be allowed access to internet unless they are accompanied by an adult guardian who either possess a valid photo identity card mentioned under sub-rule (3) or is web-photographed under sub-rule (4).
- (6) The clocks in all the computers in the cyber café shall be synchronized with the Indian Standard Time.
- (7) The owner of the cyber café shall take all precautions to ensure that the computers and computer systems in the cyber café are not used for any illegal or criminal activity.
- (8) All the computers in the cyber café shall be equipped with safety software capable of blocking access to web sites relating to obscenity, terrorism, organized crimes, anti- national and other illegal or objectionable material.

- (9) Cyber cafés shall prominently display within its premises the following documents and information, namely –
- (i) Copy of Trade license,
 - (ii) No Objection Certificate from the Crime Branch,
 - (iii) Clearance certificate from Internet Service Provider,
 - (iv) Number of computers,
 - (v) Internet Protocol address,
 - (vi) Total Bandwidth,
 - (vii) Information about other services provided through internet, namely, video conferencing, Internet Protocol telephony, etc.
 - (viii) Information about identity of the hardware or storage media of each computer.
- (10) The owner of the cyber café shall be responsible for storing and maintaining back-ups of logs and internet records of each computer as detailed below, for a minimum period of 180 days:-
- (i) Internet cookies,
 - (ii) Modem logs,
 - (iii) Proxy logs, and
 - (iv) Other logs created by network software.
- (11) At least two computers in a cyber café shall be kept in the open place for the use of browsers, in such a way that their screen shall face the common place.
- (12) Cubicles if provided in a cyber café shall not have partition above the height of 60 centimeters from the top edge of the monitor.
- (13) Browsers below the age of 18 (eighteen) years shall not be allowed to use cubicles.

6. Powers of Police to download certain software:-

The Superintendent of Police in charge of the Cyber Cell, or an officer not below the rank of Inspector of Police duly authorized by him may, with the assistance of such technical officials as may be deemed necessary, enter any cyber café and download any software to any computer kept in the cyber café for the purpose of blocking, monitoring or retrieving any content or material of web sites in consonance with the provisions of these rules.

7. Inspection

The Superintendent of Police in charge of the Cyber Cell, or an officer not below the rank of Inspector of Police duly authorized by the Superintendent of Police in charge of Cyber Cell, Crime Branch, may inspect a cyber café, its documents and the computers or network established there at any time to ensure whether the cyber café is complying with the provisions

of these rules, and the owner of the cyber café shall on demand, produce before such officer all the related documents, information, computers or network system for inspection by him and/or by the technical officers accompanying such officer.

8. Appointment and power of Adjudicator

- (1) The State Government shall appoint an officer not below the rank of Joint Director having experience in the field of Information Technology as Adjudicator under these Rules.
- (2) The Adjudicator shall have, for the purpose of discharging its functions under these Rules, the same powers as are vested in a Cyber Appellate Tribunal under sub-section (2) of section 58 of the Act.
- (3) The adjudicator shall be guided by the principles of natural justice and, subject to the provisions of the Act and these Rules, the Adjudicator shall regulate its own procedure.

9. Penalties

Without prejudice to any criminal offence with which the owner of a cyber café may be charged, the owner of a cyber café who contravenes any provision under these rules shall be liable to a penalty not exceeding ten thousand rupees for each count.

10. Appeal

Any person aggrieved by the order of the Adjudicator may prefer an appeal with the Secretary, Information Technology, Government of Sikkim within 7 (seven) working days after receipt of the order of the Adjudicator; and the decision of the Secretary, Information Technology, shall be final and binding.

11. Advisory Committee

The State Government shall constitute a Committee consisting of an officer each from the following organizations for the purpose of rendering technical advice and assistance to the Cyber Cell, Crime Branch and the Adjudicator appointed under these rules, namely:-

- (i) Information Technology Department, Government of Sikkim,
- (ii) National Informatics Centre, Gangtok,
- (iii) Bharat Sanchar Nigam Limited, Gangtok.

**Secretary,
Department of Information Technology**

APPLICATION FOR NO OBJECTION CERTIFICATE FOR A CYBER CAFÉ**(See rule 4)**

**To be submitted to the Superintendent of Police, Cyber Cell, Crime Branch In duplicates.
One copy to be returned to the applicant with the endorsement of No Objection, if granted.**

1	Full name of the owner applicant	Colour photo of the applicant without colour glass
2	Father's name	
3	Date of birth	
4	Phone Numbers Land: Mobile	
5	Applicant's e-mail ID	
6.	Permanent address	Village/street P.S: P.O: District State
7	Present address	Village/street P.S: P.O: District State
8	Address of the cyber cafe	Building name/door No. Street Town/Village P.O: P.S: District
9	Particulars of the cyber cafe	Approximate area Telephone No. E-mail ID
10	Name & address of the owner of the building in which the cyber café is to be set up	
11	Attach attested photocopy of any one of the photo identity document of the applicant owner (please tick)	1. Voter identity card (Sikkim) 2. Passport 3. Ration card (Sikkim) 4. Driving license (Sikkim) 5. Certificate of Identification 6. PAN card

12	Attach attested copy of document as proof of address of applicant (tick)	1. BSNL telephone bill 2. Electricity bill 3. Water supply bill
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Date:.....

Signature of the Cyber Café Owner

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(For use by the Cyber Cell, Crime Branch)

NO OBJECTION CERTIFICATE

The Crime Branch has no objection to the grant of a trade license to the applicant whose particulars given above, for running a cyber café at the address mentioned at column 8 above.

Date:

Signature of SP/Cyber

Cell:

Seal Crime Branch

Annexure-II

FORM OF BROWSERS' LOG REGISTER TO BE MAINTAINED IN CYBER CAFÉ

(See rule 5(2))

1. Sl. No.
2. Date
3. Browser's name and Father's/Husband's name
4. Sex and nationality
5. Present Address
6. Phone No. and email ID
7. Identity card No. & date of issue
8. Identity card issued by
9. Signature of the browser
10. Identity card copy Sl. No. (see rule 5(3))
11. Computer No.
12. Time "In"
13. Time "Out"
14. Signature of owner of cyber cafe